IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1025 OF 2005

Shakil Gambhir Shaikh ... Petitioner

versus

The State of Maharashtra & ors. ... Respondents

...

Mrs.S.A. Dhamale, for the Petitioner.

Mr.V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

12th April 2005

P.C.:

. Heard Counsel for the Petitioner. The first contention raised before this Court is that the action under section 56 of the Bombay Police Act to extern the Petitioner from the specified area is founded on three pending criminal cases against the Petitioner. Those cases have been registered on account of business rivalry and, in

fact, the Petitioner has been released on bail in each of those cases. However, in my opinion, the fact that the Petitioner has been released on bail in the pending criminal cases or the criminal cases are still pending cannot be a ground to question the justness of the externment proceedings. The proceedings have been initiated on the basis of material on record to indicate that the Petitioner was indulging in unlawful activities and was threatening the residents and others of the concerned area and that witnesses were not willing to depose against him due to fear. If it is so, the case is squarely covered by section 56(1)(b) of the Act.

2. It was next contended that the main premiss on which action has been initiated against the Petitioner is that witnesses are not willing to come forward. However, in none of the three pending criminal cases against the Petitioner, any reference is made to that fact. The fact that no reference has been made in the complaint as registered, about the witnesses not willing to come forward to depose against the Petitioner, cannot be a ground to doubt the

justness of the action initiated against the Petitioner. The action against the Petitioner is, however, founded on the materials including in camera statements of certain witnesses recorded in the course of inquiry and which is referred to in the show cause notice and made the basis to answer the issue against the Petitioner. Accordingly, even this submission does not commend to me.

3. It is next contended that the in camera statements will have to be held as extraneous material for the purpose of externment proceedings. I find no substance in this submission. It is well-accepted position that the externment proceedings can be initiated and taken to its logical end on the basis of in camera statements available with the authority., The only requirement of law is that the basic details of that material should be made known to the proposed externee in the show cause notice. That aspect has been complied with in the present case. The show cause notice refers to the in camera statements and it is on that basis the competent authority has proceeded to pass the

order against the Petitioner. If it is so, even this submission is devoid of merits.

4. It is lastly contended on behalf of the Petitioner that the Petitioner has already suffered part of the externment order as he has removed himself from the specified area for over three months after the order was passed by the competent authority on 9th December 2004. This submission, however, overlooks the legal position that it is not open for this Court to reduce the period of externment specified by the competent authority. The subjective satisfaction reached by the competent authority with regard to the said period is not a matter which can be put in issue. In the circumstances, the argument that the Petitioner has suffered the externment for a period of over three months by now is not a valid consideration for interference by this Court.

. Hence, this petition fails. The same is dismissed.

(A.M.KHANWILKAR,J.)